

**SENATE WOMEN'S ISSUES, CHILDREN AND FAMILY
SERVICES COMMITTEE**

STATEMENT TO

**[Second Reprint]
ASSEMBLY, No. 80**

STATE OF NEW JERSEY

DATED: NOVEMBER 17, 1997

The Senate Women's Issues, Children and Family Services Committee favorably reports Assembly Bill No. 80 (2R).

This bill would modify the stringent provisions of current law, set out in N.J.S.A.2A:17-56.23a, which bar the retroactive modification of child support orders except for the period during which there is a pending court application for modification.

In Ohlhoff v. Ohlhoff, 246 N.J.Super. 1 (App. Div. 1991), the Appellate Division strictly construed the statute to hold that a non-custodial father's obligation to pay child support on behalf of his son could not be retroactively modified to reflect the fact that the child was no longer living with the custodial parent (his mother). Although the child had moved out of his mother's house at the age of 13 and had been living with his father for the past year and a half, the court refused to modify the father's child support arrearages that had accumulated during that time, holding that the statute prohibited such modification.

The bill would amend N.J.S.A.2A:17-56.23a to allow the court to retroactively modify child support orders, with respect to a period during which there is no pending application for modification, but only if the result of not doing so would be unjust, due to a substantial change of physical custody or emancipation status of the child or other factors. Other factors would consist of extraordinary circumstances, including but not limited to, a medically documented mental or physical disability which prevented the obligor from making a timely application or other extraordinary circumstances of a non-medical nature.

The bill also amends section 5 of P.L.1990, c.92 (C.2A:17-56.9a) to clarify that this particular section of law is applicable only to IV-D orders for child support payments in order to comply with federal requirements on IV-D matters. The intent was not to compel review of all other orders for child support payments based merely on the passage of three years. Changed circumstances may compel review at

any interval but this particular section of law is applicable only to IV-D orders for child support payments.

This bill embodies Recommendation 18 of the report of the Commission to Study the Law of Divorce, issued April 18, 1995.

This bill is identical to Senate Bill No. 944 Sca (Matheussen), which was also released by this committee on November 17, 1997.